

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RUMEYSA OZTURK,

Plaintiff

vs.

PATRICIA HYDE, et al.,

Defendants.

No. 1:25-cv-10695-DJC

BEFORE THE HONORABLE DENISE J. CASPER
UNITED STATES DISTRICT JUDGE
MOTION HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 11
One Courthouse Way
Boston, Massachusetts 02210

April 3, 2025
2:00 p.m.

Kristin M. Kelley, RPR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3209
Boston, Massachusetts 02210
E-mail: kmob929@gmail.com

Mechanical Steno - Computer-Aided Transcript

1 APPEARANCES:

2 Adriana Lafaille
3 Jessie J. Rossman
4 Julian Bava
5 Rachel Davidson
6 Noor Zafar
7 Brian Hauss
8 ACLU of Massachusetts
9 One Center Plaza
10 Suite 850
11 Boston, MA 02108
12 617-482-3170
13 alafaille@aclum.org
14 jrossman@aclum.org
15 jbava@aclum.org
16 rdavidson@aclum.org
17 for Petitioner.

18 Mahsa Khanbabai
19 Khanbabai Immigration Law
20 115 Main Street
21 Ste 1b
22 North Easton, MA 02356
23 508-297-2065
24 mahsa@mk-immigration.com
25 for Petitioner.

16 Katherine Rosenfeld
17 Matthew Brinckerhoff
18 Sonya Levitova
19 Vasudha Talla
20 Emery Celli Brinckerhoff Abady Ward & Maazel LLP
21 One Rockefeller Plaza
22 8th Floor
23 New York, NY 10020
24 212-763-5000
25 krosenfeld@ecbawm.com
mbrinckerhoff@ecbawm.com
slevitova@ecbawm.com
vtalla@ecbawm.com
for Petitioner.

1 APPEARANCES CONT'D:

2
3 Mark Sauter
4 DOJ-USAO
5 Moakley U.S. Courthouse
6 One Courthouse Way
7 Ste 9200
8 Boston, MA 02169
9 617-748-3347
10 mark.sauter@usdoj.gov
11 for Respondents.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE CLERK: All rise.

(The Honorable Court entered.)

THE CLERK: Civil Action No. 25-10695, Ozturk vs.

Hyde.

THE COURT: Good afternoon, counsel. I'll have you introduce yourselves for the record.

MS. ROSSMAN: Good afternoon, your Honor. Jessie Rossman on behalf of petitioner.

THE COURT: Good afternoon.

MS. LAFAILLE: Good afternoon, your Honor. Adriana Lafaille on behalf of the petitioner.

THE COURT: Good afternoon.

MS. DAVIDSON: Good afternoon, your Honor. Rachel Davidson for the petitioner.

THE COURT: Good afternoon.

MR. BAVA: Good afternoon, your Honor. Julian Bava for the petitioner.

THE COURT: Good afternoon.

MS. KHANBABAI: Good afternoon, your Honor. Mahsa Khanbabai for the petitioner.

THE COURT: And there are two attorneys on Zoom?

MS. ZAFAR: Good afternoon. Noor Zafar for the petitioner.

MR. HAUSS: Good afternoon, your Honor. Brian Hauss

1 for the petitioner.

2 THE COURT: Good afternoon to you both as well.

3 Counsel?

4 MR. SAUTER: Good afternoon. AUSA Mark Sauter on
02:02 5 behalf of the defendant.

6 THE COURT: Good afternoon.

7 Counsel, I know we're here on the petitioner's
8 petition. I've had a chance to read the briefs on either side
9 and the submissions as well. I'm prepared to hear argument.
02:02 10 As you might imagine, and certainly as your briefs anticipated,
11 I'm very focused on jurisdiction. So I would like to start
12 there, counsel.

13 I'll hear from the petitioner first.

14 MS. ROSSMAN: Thank you, your Honor. Attorney
02:02 15 Lafaille will be addressing jurisdiction.

16 THE COURT: Thank you.

17 MS. LAFAILLE: Are you referring to the habeas?

18 THE COURT: Yes.

19 MS. LAFAILLE: I can start there.

02:02 20 THE COURT: I'm focused on 2142.

21 MS. LAFAILLE: Understood. Your Honor, first of all,
22 we're incredibly grateful for the Court's attention to this
23 matter on such a short time frame.

24 THE COURT: Pardon me for one second. Can we mute
02:03 25 Zoom?

1 Counsel?

2 MS. LAFAILLE: We're here, as your Honor knows, to
3 address the case of a student who was grabbed by federal agents
4 in front of her home and then taken over the course of several
02:03 5 hours, to Vermont without any ability to contact counsel,
6 without the ability for counsel to contact her, and with her
7 location for a period of about 22 hours being undisclosed, even
8 to the Department of Justice attorneys on this case.

9 We've talked in our briefs about some of the
02:03 10 exceptions to the general rule for habeas venue and
11 jurisdiction. I do want to first make argument that this
12 rule -- this case actually falls within general venue
13 principles, and there's actually no need to invoke any
14 exception, but to the extent the Court disagrees, we also fall
02:04 15 within several of those exceptions.

16 So as the Court is aware, there's the general rule,
17 and as the government cites, is that the parties have to sue
18 the immediate custodian. In this case, we've done exactly
19 that. Miss Ozturk was not at any detention facility at the
02:04 20 time this petition was filed at approximately 10:02 p.m. She
21 was, it appears to be, in a car or a vehicle of some sort being
22 transported between locations.

23 THE COURT: And, counsel, I understood that you were
24 relying, at least in part or in alternative, to the unknown
02:05 25 custodian concept?

1 MS. LAFAILLE: Yes. And I can address that, your
2 Honor. I don't think we even need to go there because this is
3 a case where we did name the right custodian.

4 Our client was, at the time she was detained, in the
02:05 5 custody of ICE Boston, ICE's Boston field office, and certainly
6 before she left Massachusetts if a habeas petition had been
7 filed, again, she was not in a detention facility, she's just
8 in a vehicle, certainly the government would agree we could
9 have filed that petition in Massachusetts. And I assume the
02:05 10 government would agree that the custodian would be the director
11 of the ICE field office, which has control over ICE in New
12 England, and not the individual ICE officer in whose vehicle
13 she is or the two or three ICE officers with her in that
14 vehicle.

02:05 15 And that didn't change when she crossed the state
16 lines. The custodian here --

17 THE COURT: Even the state lines into Vermont?

18 MS. LAFAILLE: Correct, your Honor.

19 The custodian, this is not one of those cases where,
02:06 20 you know, the typical case in which a petitioner is in a
21 facility detained outside of a jurisdiction. Our client was
22 simply in a vehicle in the custody of the ICE officers. The
23 government hasn't told us who they think the appropriate
24 custodian is. They noted we haven't named the appropriate
02:06 25 custodian.

1 Unless the appropriate custodian is the ICE officers
2 in whose vehicle she is, I think it's clear that the
3 appropriate custodian would have to be the head of New
4 England's ICE office. That's Patricia Hyde, who we've named,
02:07 5 and this is the Court with jurisdiction over Patricia Hyde.

6 So as the general rule is articulated in *Padilla*, and
7 there's a very clear articulation in the first few lines of
8 Justice Kennedy's concurrence that explains that this general
9 rule is you have to sue the immediate custodian in the place
02:07 10 where the immediate custodian is.

11 Normally, the very meaning of the immediate custodian
12 is that the immediate custodian and the petitioner are in the
13 same place, but this happens to be an odd situation where she
14 was in a vehicle that had crossed state lines, and so the
02:07 15 immediate custodian is still the head of New England's ICE
16 office who's based here in Massachusetts.

17 So we think it's clear under general principles, even
18 as articulated in the government's brief, that we sue the
19 immediate custodian, and we've done just that. So this is
02:07 20 unlike -- I know the parties cited to the briefing in the
21 *Khalil* case down in the Southern District of New York and the
22 District of New Jersey, and this has some distinctions with
23 that case, in that Mr. Khalil had already reached a detention
24 facility in New Jersey at the time the petition was filed.

02:08 25 That's not our case here. For that reason, we think

1 that we fall within general habeas jurisdiction principles even
2 without relying on the exceptions.

3 But to move on to those exceptions, as your Honor
4 mentioned, there is an exception where the custodian is unknown
02:08 5 and that exception is recognized by the *Padilla* majority in a
6 footnote. It's also implicitly recognized in 28 U.S.C. 2242
7 which asks us, requires habeas petitioners to name the
8 custodian if known. And, essentially, what that case law
9 establishes is, if you don't know the custodian, it's okay to
02:09 10 sue the supervisory official in the place where the supervisory
11 official is, and that's exactly what we've done here. The
12 habeas petition was filed at the place of the local supervisor
13 in the place where the supervisor is.

14 THE COURT: Isn't there also language in that Judge
02:09 15 Bork decision that once you know who the custodian is, to the
16 extent that that gives you jurisdiction over the custodian,
17 that disappears?

18 MS. LAFAILLE: I don't think the jurisdiction -- I may
19 not be understanding your Honor's question.

02:09 20 THE COURT: So meaning, at some point -- and I
21 understand the point about it not being known at the time that
22 the petition is filed given now the factual record about where
23 your client was at the time, but I do recall that there was
24 language in that decision about what happens once the custodian
02:10 25 is known. Should it become known that the petitioner is held

1 in a jurisdiction other than this one, a judge of this circuit would
2 be divested of jurisdiction.

3 So what would you have the Court do with that?

4 MS. LAFAILLE: So I think I want to understand this
02:10 5 case in light of how the Supreme Court cited it. What the
6 Supreme Court said is that, in this circumstance where the
7 custodian and location are unknown, the regular rules, the
8 regular immediate custodian rule doesn't apply. And so that --
9 that's all I draw from the citation of that exception in
02:11 10 *Padilla*, is that this is a recognized exception where if there
11 isn't a known custodian, the rules bend a little bit. And,
12 again, we don't even think we're bending the rules, but the
13 rules bend a little bit. And here we have personal -- we've
14 sued in a place with personal jurisdiction over the custodian
02:11 15 and where the client was -- where our client was detained.

16 THE COURT: And my memory is that when you're reciting
17 to *Padilla* in this regard, that's the majority in *Padilla*.

18 MS. LAFAILLE: Exactly, your Honor.

19 And there are two other exceptions recognized -- well,
02:12 20 recognized in the concurrence in *Padilla*, which I think are
21 perhaps less well established than the unknown custodian
22 exception, which is when the government is not forthcoming with
23 respect to the identity of the custodian --

24 THE COURT: And so, counsel, before jumping to that,
02:12 25 as I understand it, there are two issues, right? There's the

1 immediate custodian and then there's a place of confinement.
2 So are there other exceptions as to the immediate custodian
3 that you would have me consider? I think the parties on both
4 sides had cited to *Vasquez*.

02:12 5 MS. LAFAILLE: *Vasquez* I think is just establishing,
6 it's a case pre-dating *Padilla*, if I recall correctly, and is
7 establishing the general rule that, even in immigration cases,
8 we typically should sue the immediate custodian. This is a
9 case where, you know, we're not talking about cases where it's
02:13 10 unknown who the immediate custodian is.

11 THE COURT: Right.

12 MS. LAFAILLE: Under this circumstance, we have not
13 only --

14 THE COURT: And, counsel, I apologize if I wasn't more
02:13 15 precise. I was talking about the language in *Vasquez* that
16 refers to exceptional circumstances, when you would depart from
17 that general rule.

18 MS. LAFAILLE: Exactly. This is a case that has a
19 number of those exceptional circumstances. Because of the --
02:13 20 we've submitted a number of declarations just attesting to,
21 and, again, this is where this case differs from the *Khalil*
22 circumstances in the Southern District of New York where Judge
23 Furman said he did not believe, had been shown that the
24 circumstances were unusual. Here we've submitted a number of
02:13 25 declarations attesting to --

1 THE COURT: And I've read them.

2 MS. LAFAILLE: -- how unusual what happened here was.

3 And, particularly, the efforts to withhold information about

4 Miss Ozturk's whereabouts from her counsel and from even

02:14 5 counsel for the government make this case particularly unusual.

6 The declarations submitted by the government's witness

7 at paragraph 20 talks about how at the time of petitioner's

8 request there was no known counsel of record, and once, through

9 the filing of this habeas, there was attorney contact

02:14 10 information, it was provided to the people in Louisiana so that

11 she could call counsel from Louisiana.

12 So, in other words, it was deliberately not provided

13 to people who were with Miss Ozturk and who could have helped

14 her call counsel, which, as her declaration attests, she was

02:14 15 asking to do. That information was withheld from those who

16 could have given it to her at a time when she could have used

17 it to call counsel before being sent to Louisiana.

18 And I want to --

19 THE COURT: Counsel, I can't recall if it's in the

02:15 20 submission by the government here or reflected in the papers

21 that were filed in the *Khalil* case where I've read the papers

22 in that case as well, but I imagine one of the responses from

23 the government is going to be in regards to some internal ICE

24 rule about having detainees have contact with their attorneys

02:15 25 within 24 hours of their detention.

1 What, if anything, would you have me make of that, of
2 that rule?

3 MS. LAFAILLE: Well, she didn't, first of all. She --
4 again, despite -- I think even if your Honor saw nothing
02:16 5 unusual in the fact that she couldn't call counsel within the
6 time that she was in Massachusetts and Vermont, it's still
7 quite unusual that even the government's own lawyers were not
8 told despite their efforts to learn their whereabouts, where
9 she was.

02:16 10 There's an added feature here, which is this Court's
11 order on Tuesday night close to 11:00 p.m. which instructed the
12 government not to move Miss Ozturk out of Massachusetts except
13 after 48 hours of notice. The government getting that order
14 and knowing she was out of Massachusetts at the time of that
02:16 15 order had a couple of choices, one of which was coming to the
16 Court to say, hey, actually, she's already out of
17 Massachusetts, and obviously that wasn't the route taken. The
18 route taken instead was to ignore the order and not disclose
19 her location to her counsel.

02:17 20 It's particularly notable because the intention of
21 that order is stated in the order, and it's to preserve the
22 status quo. Even if the status quo at that moment was that she
23 was in Vermont, what the government did was the opposite of
24 preserving the status quo, which was secretly whisking her away
02:17 25 and making sure no one would know where she was until she was

1 in Louisiana.

2 THE COURT: Counsel, before I interrupted you with a
3 question before, I think you were moving to the other matter of
4 place of confinement, which I'm also interested in hearing
02:17 5 about.

6 MS. LAFAILLE: So I think these are interrelated
7 concepts, of course. In terms of the -- the government has
8 separated them in their brief, but the general rule, sue the
9 immediate custodian, sue the immediate custodian where the
02:18 10 custodian is, and, of course, that's also generally where the
11 petitioner is. For the idiosyncratic reasons here, the vehicle
12 the petitioner was in had already crossed state lines.

13 We think, generally, the rule about suing in the
14 location of confinement is really just an expression of the
02:18 15 ordinary principle that we sue the immediate custodian in the
16 location where the immediate custodian is.

17 The same exceptions -- the exceptions we discussed
18 with regard to the immediate custodian is also relevant here.
19 Where the custodian is unknown, it's permissible to sue someone
02:19 20 higher up in the chain in the place where that person is. Of
21 course, that's what we've done, and then here we have all of
22 these unusual circumstances involving efforts to make it
23 difficult for anyone to learn where Miss Ozturk was.

24 THE COURT: And so, counsel, that language from the
02:19 25 concurrence in *Padilla* if I'm following correctly.

1 MS. LAFAILLE: With regards to the -- yes, the purpose
2 of removing to make it difficult, exactly.

3 THE COURT: So, counsel, other than the concurrence in
4 *Padilla*, what else do I -- do you rely on in regards to the
02:19 5 place of confinement? And I understand your point that they're
6 interrelated, although a number of the cases seem to treat them
7 differently.

8 MS. LAFAILLE: Yes. The place of confinement, again,
9 this is not a situation where they're talking about subject
02:20 10 matter jurisdiction. We're talking about habeas petitions,
11 which are meant to be equitable.

12 And I also want to go back to the purpose of these
13 rules, which is to prevent forum shopping. The purpose of
14 these rules, of course, is to make sure that a petitioner
02:20 15 cannot simply choose which level of official they're going to
16 sue or sue a national official in any jurisdiction of their
17 choice in the United States.

18 Here we have the opposite situation. We really have a
19 situation where the government is forum shopping, that is
02:20 20 whisking away a petitioner to its forum of choice and doing
21 everything in its power to ensure that a habeas petition cannot
22 be filed and then seeking the dismissal of this petition or a
23 transfer to its forum of choice.

24 So particularly keeping in mind that we're not talking
02:21 25 here about subject matter jurisdiction, and there's no question

1 that there's personal jurisdiction, this really is about
2 implementing venue and implementing the intention of the habeas
3 statute, which again is to -- is set up to prevent petitioners
4 from forum shopping and having a choice of forum.

02:21 5 Here, Attorney Khanbabai sued in the only forum she
6 really could have sued in unless she was going to sue in
7 multiple forums, which, as is pointed out in the recent
8 District of New Jersey opinion, might raise ethical questions
9 if she can't have a good faith basis to assert that her client
02:21 10 is in a particular forum.

11 THE COURT: And so I appreciate the argument. I think
12 that is invoking the language in Justice Kennedy's concurrence,
13 I think, as the government has pointed out in their papers.
14 Although it was the concurrence, it was joined by two justices.
02:22 15 I was unable, as I think the judge in *Khalil* was unable, to
16 find any case in which a court has relied on that exception for
17 the purposes of finding jurisdiction where the petitioner was
18 not in -- was not in confinement in the district of which the
19 petition was filed.

02:22 20 So what do you say to that?

21 MS. LAFAILLE: I think in looking at all those cases
22 the thing they have in common though is that the petitioner is
23 in another facility that has another custodian. There
24 aren't -- I don't think we've seen a case where the petitioner
02:23 25 is in transit. I'm not aware of one where these rules about

1 habeas jurisdiction are being applied in such an unbending way
2 to someone who is in transit still within the custody and
3 control of the official in the state in which she was arrested
4 and in which the petition was filed.

02:23 5 THE COURT: Thank you.

6 MS. LAFAILLE: And then, lastly, your Honor, largely
7 for the reasons in the *Khalil* opinions, if the Court determines
8 that Massachusetts is not an appropriate forum for this case,
9 then transfer to Vermont would be the appropriate remedy, not
02:23 10 dismissal or transfer to Louisiana. And that's simply, I
11 think, explained quite well in the *Khalil* decisions but also
12 just a straightforward application of 28 U.S.C. 1631.

13 THE COURT: Right. And I understood from the papers
14 that you were relying on 1631, although I think the Southern
02:24 15 District had invoked 1404 or 1406, but your argument is under
16 1631.

17 MS. LAFAILLE: Yes, your Honor, and we also have
18 specific case law in the First Circuit *Federal Home Loan Bank*
19 *vs. Moody's Corp.*, 821 F.3rd 102, that speaks specifically to
02:24 20 1631. Questions have been raised about whether that provision
21 applies when there's an issue of personal jurisdiction as
22 opposed to subject matter jurisdiction.

23 So, in the First Circuit, it is law that any kind of
24 jurisdiction if there's an issue of habeas jurisdiction,
02:24 25 personal jurisdiction, that also is cause to apply this

1 provision, and that decision also makes clear that the law in
2 the First Circuit creates a presumption of transfer in that
3 circumstance and it's only when it has to be found that it's
4 not in the interest of justice to transfer the case that the
02:25 5 analysis would result in not transferring.

6 THE COURT: Right.

7 MS. LAFAILLE: And I think for all the reasons we were
8 discussing with regards to the application of the *Padilla*
9 exceptions, we think it's certainly in the interest of justice
02:25 10 if the Court concludes that this is not an appropriate venue to
11 transfer the case to Vermont.

12 THE COURT: And so 1631 is invoking the want of
13 jurisdiction of the transferring court. Okay.

14 MS. LAFAILLE: Correct.

02:25 15 THE COURT: So, counsel, is it as an operation of 1631
16 or as of case law that the petition filed here would be taken
17 as having been filed on the evening of March 25th in Vermont?

18 MS. LAFAILLE: As the *Khalil* decision in New Jersey I
19 think very well analyzes this provision, I think it could be,
02:26 20 just the text of it that it would be taken, proceed as if it
21 was filed in that court at the time it was filed.

22 THE COURT: Thank you.

23 MS. LAFAILLE: Thank you, your Honor.

24 THE COURT: I'll hear from the government on this
02:26 25 point about jurisdiction.

1 MR. SAUTER: Thank you, your Honor.

2 I'll start with where counsel started with the general
3 rules that everyone understands apply to habeas provisions,
4 which require for a court to have habeas jurisdiction that the
02:26 5 petition needs to be filed in the district of confinement and
6 needs to name the immediate custodian over the petitioner.

7 In this case, neither of those two general rules that
8 have been called longstanding rules by the Supreme Court were
9 followed.

02:27 10 THE COURT: And, counsel, can the petitioner really be
11 faulted for that here given the circumstances that have become
12 clear even from the government's affidavit?

13 MR. SAUTER: At the time of the original filing, no,
14 your Honor. I don't think petitioner can be faulted for filing
02:27 15 the petition in Massachusetts. Certainly at the time the
16 amended petition was filed on March 28th, it was clear at that
17 point that the district of confinement was the Western District
18 of Louisiana for at least three days at that point, two and a
19 half days, and the immediate custodian of that facility was
02:27 20 also known at the time, in time of the amended filing.

21 THE COURT: Counsel, and I know your sister is
22 pointing me to the overlap of these considerations of place of
23 confinement and immediate custodian, but I'd like to hear you
24 in regards to the argument about the Court not needing to reach
02:28 25 any exception as to the immediate custodian given the transient

1 nature of her location at whatever it was, 10:03 or 10:05, on
2 the evening of March 25th.

3 MR. SAUTER: I think, based on the standard practice,
4 an exception would need to be reached here because, again,
02:28 5 district of confinement, this petition was not filed in the
6 district of confinement and an immediate custodian was not
7 named, nor sister counsel indicates that she believes that the
8 immediate proper custodian was named in that supervisory
9 officials were named to the petition, but this is from the
02:28 10 Supreme Court to the First Circuit, down to this district court
11 that supervisory officials, such as the field office director
12 of ICE, even if that field office director covers New England,
13 is not a proper respondent to a habeas petition.

14 And *Vasquez*, the First Circuit case, discussed this
02:29 15 with, in that case, the petitioner had named that when INS, the
16 district director for Boston, First Circuit said, well, did not
17 name the respondent, the proper respondent, which was the INS
18 district director in Louisiana.

19 So, in this case, the proper respondent would have
02:29 20 been an ICE field office director that had jurisdiction,
21 immediate jurisdiction over Vermont where petitioner was at the
22 time.

23 THE COURT: But that was unknown at the time. So,
24 counsel, you've talked about *Vasquez*. There was language there
02:29 25 about exceptional circumstances, right, in regards to the

1 immediate custodian where there's either furtiveness or bad
2 faith by the government. It's an "or", so I don't think the
3 Court has to find both. It can find either or. Why shouldn't
4 I apply -- if for some reason I wanted to apply the unknown
02:30 5 exception, why shouldn't I reach that exception?

6 MR. SAUTER: Yes, your Honor. So Vasquez dealt with
7 two different potential extraordinary circumstances that the
8 First Circuit could imagine. First was in citation to
9 *Demjanjuk* from Judge Bork where it said if petitioner was being
02:30 10 held at an undisclosed location. The second was when there was
11 the facts that indicated that movement out of the district was
12 done to manipulate jurisdiction.

13 I'll take the first extraordinary circumstance, if
14 that's fine with your Honor, in terms of being held in an
02:31 15 undisclosed location. So, again, this citation was from the
16 *Demjanjuk* case. If you look at the facts of that case, it
17 dealt with an individual who was subject to immediate
18 extradition from the United States who was being held in a
19 confidential location. Judge Bork acted on the petition,
02:31 20 saying that it won't make sense for the public to learn of the
21 location of the individual.

22 The facts in this case are dramatically different.
23 Within 24 hours of the arrest, petitioner's location was known.

24 THE COURT: But, counsel, isn't the period I'd be
02:31 25 looking at when the petition was filed and at that time it was

1 unknown? It was undisclosed.

2 MR. SAUTER: It was undisclosed.

3 THE COURT: I should take that back. It was known to
4 the government but not disclosed to the petitioner.

02:31 5 MR. SAUTER: It was not disclosed to the petitioner at
6 that time. That is true. And, again, going to the *Demjanjuk*
7 decision, as the Court pointed out earlier, the language from
8 Judge Bork says, at the point when the disclosure, when we
9 learn where the individual is, if that individual is not in the
02:32 10 D.C. circuit, then the circuit loses jurisdiction over that
11 individual. So that would be the case here when the next day
12 this was not an unknown location anymore, not an undisclosed
13 location.

14 THE COURT: But it certainly was at the time the
02:32 15 petition was filed, counsel, right?

16 MR. SAUTER: Yes, your Honor.

17 The other cases cited by the petitioner when she
18 discusses the unknown custodian also show the difference from
19 this case. Those involved enemy combatants, Al Qaeda members
02:32 20 who were being held by the military overseas. Those were the
21 first two cases cited. The third case was a national class
22 action about detainees.

23 THE COURT: Are we still talking about *Vasquez*?

24 MR. SAUTER: This is talking about *Vasquez* because
02:33 25 it's talking about the undisclosed location, which is this same

1 exception that's referenced by petitioner as the unknown
2 custodian exception, I believe.

3 THE COURT: But I guess, counsel, I mean, I know that
4 Vasquez, as I think you mentioned, does mention that case, but
02:33 5 I'm not sure that they're exactly the same, right? One is
6 about unknown, and the other I suppose could also be unknown,
7 but it seems focused on government conduct.

8 MR. SAUTER: Yes, your Honor. And, again, with the
9 government conduct here, and I think this also touches the
02:33 10 second possible extraordinary circumstance set forth by the
11 Vasquez court, whether there's an attempt to manipulate
12 jurisdiction, the government would argue here that there was no
13 attempt to manipulate jurisdiction.

14 The driving force for the transfer of petitioner
02:34 15 outside of Massachusetts was the fact that there is no detainee
16 facility, no facility to detain female detainees in
17 Massachusetts.

18 THE COURT: And, counsel, I've read all of the
19 affidavits, right, filed by the government and the multiple
02:34 20 ones filed on petitioner's side. I see reference in the
21 government's affidavit to sort of a characterization of the
22 movement of detainees being routinely conducted after arrest
23 due to operational necessity and considerations. It doesn't
24 say anything about the timing of any detainee moves, and I now
02:35 25 have a number of affidavits from immigration attorneys

1 experienced in this field and working within this region who
2 say that the timing of these moves is not -- is not routine and
3 common.

4 Isn't that something I can look at under the *Vasquez*
02:35 5 exceptions?

6 MR. SAUTER: I think what your Honor can look at is
7 the reasons set forth by ICE as to why she was transferred out
8 of Massachusetts and when those decisions were made. Those
9 decisions were made prior to her arrest, which means they were
02:35 10 made prior to the filing of this habeas petition. Prior to her
11 arrest it was determined that there is no detention facility in
12 Massachusetts where she could be detained.

13 So if she was transferred -- any places she'd be
14 transferred to after her arrest would be outside of
02:36 15 Massachusetts. It was then determined that there was detention
16 location space for her at a female facility in Louisiana. As a
17 result, a plan was put in place, which led to her transfer out
18 of Massachusetts to Vermont and then to a flight the next, very
19 early the next morning.

02:36 20 THE COURT: I'm not sure, counsel. Which way does
21 that cut in regards to the issue your sister brings up about
22 that counsel, even after the petition was filed on her behalf,
23 didn't know her whereabouts? Like, I'm not sure that -- I'm
24 not sure that the prior arrangements made by the government are
02:36 25 a fact in the government's favor in this analysis.

1 MR. SAUTER: I think the prior arrangements made by
2 the government show that there was no attempt to manipulate
3 jurisdiction of a habeas petition when that habeas petition had
4 not yet been filed when those arrangements were made. If a
02:37 5 habeas petition is filed and then there was a flurry of
6 activity to try to bring a person outside of the jurisdiction
7 of that court, I think that would be the attempt to manipulate
8 jurisdiction.

9 THE COURT: But what do you say to your sister's
02:37 10 argument that the flurry of activity actually continued after
11 the petition was filed and the government was on notice that it
12 had been filed and that she was represented?

13 MR. SAUTER: The government activity that continued
14 was activity that had already been set in place prior to the
02:37 15 petition being filed. She was being moved to Vermont so she
16 could spend the night in Vermont and then be able early morning
17 to take a flight out of Vermont.

18 THE COURT: And, counsel, doesn't -- shouldn't that
19 movement be effected by an order entered by this Court?

02:38 20 MR. SAUTER: If the petitioner was inside of
21 Massachusetts and the government learned that there was an
22 order prohibiting her departure or transfer outside of
23 Massachusetts, then that movement certainly would be effected
24 by such an order, but when she was not in Massachusetts, an
02:38 25 order that says, do not move from Massachusetts does not have

1 that same effect.

2 THE COURT: Even if the respondents have nationwide
3 authority presumably?

4 MR. SAUTER: Even if the respondents have nationwide
02:38 5 authority? The language of the order still says do not move
6 outside of Massachusetts, which does not affect a situation
7 when a person is already outside of Massachusetts.

8 THE COURT: And, counsel, just to move on to another
9 consideration, still focused on *Vasquez*, counsel, in this
02:39 10 situation under *Vasquez*, the exceptions, can the Court consider
11 the circumstances of the arrest itself in regards to
12 furtiveness or bad faith?

13 MR. SAUTER: I don't believe there's language in
14 *Vasquez* that would allow a court to consider the circumstances
02:39 15 of the arrest, your Honor.

16 THE COURT: Why would that be, counsel?

17 MR. SAUTER: I think what *Vasquez* is concerned about
18 is a transfer from district of confinement, and the arrest
19 itself is not related to the transfer outside of the
02:39 20 jurisdiction. *Vasquez* is looking at if extraordinary
21 circumstances exist in an undisclosed location or if ICE
22 spirited the individual to another jurisdiction in an attempt
23 to manipulate jurisdiction to a different district. The
24 lawfulness of the arrest itself --

02:40 25 THE COURT: I'm not talking about the lawfulness. I'm

1 talking about the circumstances.

2 MR. SAUTER: I'm not sure I -- I'm not sure I
3 understand the circumstances that you are referring to in terms
4 of how it may affect.

02:40 5 THE COURT: So whether or not -- so in regards to
6 identification or where the petitioner was going to be
7 transferred.

8 MR. SAUTER: The information that we have, your Honor,
9 from ICE is that the decision was made before of where she was
02:40 10 going to be transferred because there's not a detention
11 location in Massachusetts for female detainees.

12 THE COURT: Do I know anything in the record about
13 what the petitioner was told at the time that the agents
14 arrested her in regards to where she was headed?

02:41 15 MR. SAUTER: No, your Honor. Your Honor did reference
16 earlier a detainee transfer policy that Judge Furman cited to
17 in *Khalil*, Southern District of New York.

18 THE COURT: This is in regards to the contact with
19 counsel?

02:41 20 MR. SAUTER: Exactly, your Honor. A few things that
21 come into play with that. At the time of petitioner's arrest,
22 ICE did not have a counsel of record for petitioner. For ICE
23 to have a counsel of record, the petitioner's counsel needs to
24 submit a form called a G-28. No G-28 had been submitted prior
02:41 25 to her arrest on behalf of petitioner. That's set forth by ICE

1 in their declaration.

2 But the transfer policy, the language in the transfer
3 policy indicates that the individual is not, does not have the
4 opportunity to contact counsel until the individual arrives at
02:42 5 the final destination.

6 So here on the night of her arrest, that was not her
7 final destination in Vermont. Her final destination was next
8 day in Louisiana. After she arrived in Louisiana, she was able
9 to contact her attorney.

02:42 10 THE COURT: And so I guess, counsel, to ask you the
11 flip side of what I asked your sister on this particular issue,
12 I understand that ICE might have a policy in that regard but
13 don't I get to consider that circumstance along with the other
14 circumstances under *Vasquez*, at least as to this issue about
02:43 15 the immediate custodian?

16 As I understand the affidavits that I now have,
17 there's an affidavit that the petitioner was not able to
18 contact her attorney, and obviously I had previously heard from
19 her counsel that she wasn't able to locate her client.

02:43 20 So, as I said, the flip side of what I asked your
21 sister, isn't that something I can consider?

22 MR. SAUTER: I think certainly that can be considered
23 in the analysis of whether the petition was filed in the proper
24 court. If she was not able to contact her attorney to say, I
02:43 25 am in Vermont, then, as the Court asked earlier, can

1 petitioner's counsel be faulted for not filing in Vermont, and
2 the government does not fault the petitioner's counsel for
3 filing in Massachusetts.

4 Does her inability to contact her attorney on the
02:44 5 night of her arrest bring this into an exception? That's been
6 discussed in *Vasquez* or in a concurrence and indeed is a
7 different question. I think that question cuts against
8 petitioner, that it does not bring us into an exception because
9 ICE following the policy that it follows did not allow a phone
02:44 10 call to be made that evening is not bad faith or is not an
11 attempt to keep someone in an undisclosed location or to
12 prevent the awareness of where the individual is going to be.
13 That awareness came the next day, midday the next day, when it
14 was apparent she was in Louisiana.

02:44 15 THE COURT: I wasn't suggesting that circumstance
16 alone, but it's one of the circumstances the Court could
17 consider.

18 MR. SAUTER: I think the Court can consider that and I
19 think the Court would also, in that consideration, look that
02:45 20 it -- that action follows directly in accordance with an ICE
21 policy.

22 THE COURT: And, counsel, I focused my questions on
23 this immediate custodian issue, but in regards to the place of
24 confinement, which you also mentioned, counsel, what do you say
02:45 25 to your sister's arguments in regards to *Padilla* and otherwise?

1 MR. SAUTER: Place of confinement can't be swept away
2 as one of the longstanding rules that the Supreme Court in
3 *Vasquez* has looked at as a necessary precondition for the
4 district court to exercise jurisdiction over a habeas petition
02:45 5 because, again, the Court's order would be directed to
6 custodian of the individual in the place of confinement. If
7 the individual is not located in the district that the Court
8 sits, then the Court doesn't have jurisdiction over that
9 person, the custodian.

02:46 10 So even in the *Demjanjuk* case where it was found to be
11 an exception of the immediate custodian rule, the court there
12 was quick to note that once we learn the district of
13 confinement, if it's not District of D.C., then the Court
14 doesn't have jurisdiction.

02:46 15 And that same reasoning was used by the *Khalil* court
16 in New Jersey where the court there said, even if it is an
17 unknown custodian, proper district for the petition to be heard
18 still has to be in the district of confinement. That's why the
19 New Jersey, the *Khalil* New Jersey court said that was in New
02:47 20 Jersey where she was detained at the time that the petition was
21 filed.

22 THE COURT: You mean in terms of the transfer between
23 the Southern District and New Jersey?

24 MR. SAUTER: Correct, your Honor.

02:47 25 THE COURT: And so, counsel, on this last point, and

1 some of it I think you anticipated when I was asking you about
2 *Vasquez*, why not consider the exception suggested in the
3 concurrence?

4 MR. SAUTER: From *Rumsfeld v. Padilla*?

02:47 5 THE COURT: From *Padilla*. From *Padilla*.

6 MR. SAUTER: The Court doesn't need to consider it
7 because it's not binding. It's not holding from that Supreme
8 Court case as Judge Furman in Southern District of New York
9 discussed, but even if court -- well, I'll add the second point
02:48 10 to that, and I think the Court mentioned this earlier.

11 Petitioner, in her briefing and argument here, was not able to
12 provide any case nationwide that has applied the concurrence
13 from *Padilla* to obtain relief, and Judge Furman made that point
14 also.

02:48 15 But even if we look at those proposed exceptions from
16 *Padilla*, I think we've discussed parts of them. The first
17 talks about ICE not being forthcoming with respect to the
18 identity of the custodian or the place of the detention. All
19 of that information was known less than 24 hours after the
02:49 20 arrest on the next day. So we're not in a situation where
21 someone was being held in an undisclosed location for a
22 determinant time.

23 THE COURT: But wasn't it a period, counsel? I guess
24 that's -- I mean, isn't my focus on when the petition was
02:49 25 filed?

1 MR. SAUTER: When the petition was filed, your Honor,
2 they -- petitioner's counsel did not know where she was.
3 That's not the same thing as ICE not being forthcoming about
4 her location. ICE was still in the process of transporting her
02:49 5 through Vermont at the time that the petition was filed. There
6 hadn't been -- it would be a -- perhaps it would be a different
7 situation if there was communication prior to the petition
8 being filed and that information was not disclosed.

9 THE COURT: Counsel, let me ask a better question. I
02:50 10 think *Padilla* also talks about the movement of the petitioner
11 or of a petitioner as being one of the issues that could lead
12 to the application of this exception that Justice Kennedy
13 discussed.

14 MR. SAUTER: Right, whether there was an indication
02:50 15 that the purpose of the transfer was to make it difficult.

16 THE COURT: Yes.

17 MR. SAUTER: ICE, through a sworn declaration, stated
18 the purpose of the transfer was to -- was because there was not
19 facilities within Massachusetts where she could be detained and
02:50 20 the purpose of the transfer was to take her to a location where
21 she could be detained.

22 THE COURT: But that doesn't stand as undisputed on
23 the record now, does it, given the affidavits that have been
24 filed in regards to bed space and processing and the timing of
02:51 25 movement?

1 MR. SAUTER: There's no bed space within, no detention
2 space within Massachusetts where a female detainee could be
3 detained for purposes of removal proceedings, which is why she
4 was detained. So, in Massachusetts, there's none, no space for
02:51 5 female detainees.

6 THE COURT: Right, but I guess -- isn't the *Padilla*
7 exception a little bit broader than that in regards to not just
8 about -- not just about the whether or not she's in
9 Massachusetts but whether or not she's being moved in a manner
02:51 10 in which it would make it difficult to determine where you
11 would file the petition?

12 MR. SAUTER: Right, and I think this was discussed
13 before the southern district with Judge Furman in the *Khalil*
14 case. The petitioner there tried to say the swift transfer
02:52 15 across a number of states brought upon this concurrence. Judge
16 Furman there said no. What the concern was in *Padilla* was
17 continuous movement so he could never be in one location to
18 allow the habeas petition to catch up.

19 THE COURT: Right.

02:52 20 MR. SAUTER: The transfers here were made so she could
21 get to the location where the habeas petition could be filed
22 the next day when she was in Louisiana. So the transfers here
23 were not done in a way to try to, you know, stay ahead of the
24 habeas petition. They were done to put her in a location where
02:52 25 she could be on a flight at five in the morning to end up at

1 the location that had been determined for her prior to her
2 arrest, prior to a habeas petition.

3 THE COURT: Counsel, obviously your sister would have
4 me take a different interpretation of the facts here, and
02:53 5 obviously the *Khalil* case, I don't know what factual
6 development was made in regards to what the regular and routine
7 practice is, but I appreciate the argument.

8 Counsel, if I -- I don't know if you have anything
9 further to say on this point, but I know the government is
02:53 10 seeking dismissal of the petition, but if I were to choose not
11 to dismiss the petition, you argue in the alternative that I
12 should send this to the Western District of Louisiana.

13 Why should I do that as opposed to Vermont where this
14 petition could have been filed at the time that it was filed?

02:53 15 MR. SAUTER: Thank you. I will address that one very
16 quick last point on the --

17 THE COURT: Sure.

18 MR. SAUTER: -- the questions have been about the
19 unusual nature of transfers.

02:54 20 THE COURT: Yes.

21 MR. SAUTER: There was a recent news article that was
22 cited and the government's response involving a female
23 scientist who was detained at Boston Logan Airport. She was
24 detained by Customs and Border Protection. She was turned over
02:54 25 to ICE. She was transferred from Massachusetts to Vermont, on

1 a flight from Vermont to Louisiana. This happened I believe in
2 mid February. So this circumstance that is alleged to have
3 been very unusual --

4 THE COURT: Yes. I guess the difference is, counsel,
02:54 5 whether recent is regular, but I understand your point.

6 MR. SAUTER: Thank you.

7 THE COURT: I'll give it consideration.

8 MR. SAUTER: Thank you, your Honor.

9 In terms of a proper venue for this case to be
02:54 10 transferred, so the government argues that they should be
11 transferred to the Western District of Louisiana because it is
12 the district of confinement. The immediate custodian is known.
13 And when the transfer statutes, three of which have been cited
14 by the Court earlier, they look at where the petitioner might
02:55 15 have been brought or could have been brought.

16 The time that the amended petition in this case was
17 filed, there's only one location and first district where the
18 amended petition could be filed, and that's the Western
19 District of Louisiana at that time as the district of
02:55 20 confinement and the immediate custodian is known. So a
21 transfer to the District of Vermont at this point, the court
22 there does not have jurisdiction over an immediate custodian
23 and the petitioner is not in that district either.

24 THE COURT: Counsel, isn't it sort of common in civil
02:55 25 cases that an amended pleading would relate back to the

1 original pleading?

2 MR. SAUTER: In civil cases, yes, generally. I think
3 here where we're dealing with the filing of a habeas petition
4 in a proper district when there's two longstanding rules that
02:56 5 when an amended petition is filed that is not in a proper
6 district, it doesn't make sense for it to be transferred to
7 another district that is also not proper because that district
8 doesn't satisfy the longstanding rules.

9 THE COURT: But you're aware of the decision I might
02:56 10 find persuasive out of the District of New Jersey?

11 MR. SAUTER: I am, your Honor. The only -- the thing,
12 the distinguishing factor there is there was not an amended
13 petition that was filed and it wasn't filed at a time when this
14 was clear as to district of confinement and immediate custodian
02:56 15 over the petitioner.

16 THE COURT: Thank you.

17 MR. SAUTER: Thank you, your Honor.

18 THE COURT: Counsel, if you want brief rebuttal.

19 MS. LAFAILLE: Thank you, your Honor.

02:57 20 I guess I'll start here with the point about the
21 amended petition. I don't think the government has cited a
22 single case where that is at all relevant for the
23 jurisdictional analysis here. And, again, this plays very much
24 the wrong way into the concern for forum shopping that's at the
02:57 25 heart of these rules. It's not possible at the time in these

1 cases where a petitioner is quickly being moved and the basis
2 for detention, the circumstances for detention, are unknown.
3 It's not possible to have a fully fleshed out habeas petition.

4 What the government is saying is, essentially, parties
02:57 5 should be penalized for amending habeas pleadings and that
6 should leave the government to be able to choose its forum.
7 And that just sets a very strange and dangerous precedent here.

8 I also want to go back to the -- actually, just to
9 stay on that point for a moment, it also cuts against *ex parte*
02:58 10 *Endo* and I thought the very persuasive points --

11 THE COURT: Meaning where it's filed in the proper
12 district initially and someone has transferred after that?

13 MS. LAFAILLE: Exactly, your Honor. And nothing about
14 amendment changes that. I think your Honor has it right that
02:58 15 the relevant thing for habeas is the time of filing. Your
16 Honor referenced the language in Judge Bork's opinion. That's
17 not binding on the Court and contrary to *ex parte Endo* which
18 makes clear that it's the time of filing. It's the
19 jurisdiction at the time of filing that matters. We think that
02:59 20 was established here.

21 I also would point to the compelling language in the
22 District of New Jersey opinion in this regard about gaps in
23 habeas jurisdiction. We can't interpret these rules in a way
24 that would create periods of time when there's effectively no
02:59 25 habeas jurisdiction and no habeas petition can be lodged. That

1 would --

2 THE COURT: In terms of the travel of a detainee?

3 MS. LAFAILLE: Correct, your Honor.

4 What the government is saying essentially is there is
02:59 5 no way in those early periods that a habeas petition could be
6 filed and considered if the government is making the choice to
7 move someone to their forum of choice and, essentially,
8 petitioners won't have the ability during those periods to file
9 petitions that would be considered. That just runs contrary to
03:00 10 the suspension clause and *ex parte Endo*.

11 I also want to talk about this prior plan thing and
12 the government's argument that the prior plan somehow helps the
13 government. First of all, the notion that the prior plan was
14 due to bed space constraints is not something the Court has to
03:00 15 credit. It is in a sworn declaration, but it's a sworn
16 declaration of an officer who is claiming no personal knowledge
17 over that and is claiming to write this declaration based on
18 reviews of record systems and conversations with undisclosed
19 other people.

03:00 20 So I see nothing there that needs to be credited,
21 particularly when on the other side of that ledger there is
22 credible testimony, including the declaration of Miss Walsh,
23 Attorney Walsh saying that there's reason to think that there
24 was bed space in New England and that transfer --

03:01 25 The government says, of course, in this paragraph 6 of

1 this declaration, the portion over which we're talking about
2 that there is no personal knowledge, that there was no bed
3 space in a facility where essentially in New England, where the
4 petitioner would have been able to appear for an immigration
03:01 5 court hearing in New England. Attorney Sauter kept quoting no
6 space in Massachusetts. Of course, that's not the same thing
7 as the declarations. We know there is reason to think there
8 was bed space in New England.

9 And the Court doesn't have to ignore what was
03:01 10 happening. The government was already embroiled in litigation
11 about Mr. Khalil and litigation of a number of other cases
12 similarly involving students and scholars arrested in response
13 to pro-Palestine protests. It does not have to -- the Court
14 does not have to ignore the question of venue as being
03:02 15 litigated, and the government would have had every incentive to
16 transfer Miss Ozturk quickly and not to inform her counsel and
17 to make it difficult essentially for counsel to learn her
18 location.

19 The rule about calling counsel, again, even if that
03:02 20 wasn't violated, that says nothing about when counsel is making
21 affirmative attempts to reach the petitioner and, again, it
22 says nothing even about why even counsel for the government
23 were not told where Miss Ozturk was even though -- it appears
24 they were making, at least represented to us, that they were
03:03 25 making inquiries about her whereabouts, and that's particularly

1 troubling in light of the supposed prior plan.

2 If there was a prior plan all along and these
3 movements weren't happening in the spur of a moment fashion,
4 which I accept, then it's even more troubling that counsel for
03:03 5 the government won't have been informed about it at a time when
6 corrective action might have been taken.

7 The Russian scientist case that Mr. Sauter
8 mentioned --

9 THE COURT: In a footnote, yes.

03:03 10 MS. LAFAILLE: Somebody was transferred to Vermont. I
11 appreciate that this is not in the record but I'm happy to get
12 an affidavit from this attorney. That attorney spoke to his
13 client while she was in Vermont because her location in Vermont
14 was disclosed to him.

03:03 15 So, again, this just highlights the unusual nature,
16 like all of the declarations highlight, of what was done here
17 and I think makes abundantly clear that these circumstances,
18 even if they don't fall within the ordinary rule, which for the
19 reasons we've said we think they do, certainly fall within
03:04 20 exceptions that are intended again to be consistent with the
21 interest to prevent forum shopping to extend the jurisdiction
22 of habeas courts in equitable ways.

23 And, finally, on this point about the immediate
24 custodian, Mr. Sauter still hasn't been clear about which
03:04 25 custodian he thinks the petitioner should have named or could

1 have named. I believe he said during his remarks that it would
2 have been the ICE field office director with control over
3 Vermont. That is exactly who he named. Because there's a New
4 England field office, a field office director sits in
03:05 5 Massachusetts in Burlington, and that person has control --

6 THE COURT: This is Miss Hyde?

7 MS. LAFAILLE: Yes.

8 I'll end just where I started. I'm sure we've all
9 seen the video of Miss Ozturk being grabbed by ICE officers on
03:05 10 the street in Somerville. If we could freeze that moment in
11 time and imagine a habeas petition being filed, which surely
12 she had the right to file if there was the wherewithal to do it
13 at that moment, it's clear that the --

14 I don't think Mr. Sauter is saying that the ICE
03:05 15 officer who was physically grabbing her would have been the
16 custodian. The custodian had to be the person in control of
17 the New England area for ICE. I took his remarks to be
18 essentially acknowledging that. And that didn't change. That
19 person in control did not change when the vehicle that
03:06 20 Miss Ozturk was in crossed state lines.

21 So we think this, although this is an unusual case
22 where the client was across state lines, she was in a vehicle,
23 her condition -- excuse me -- her custodian had not changed.
24 And for all of the reasons we've articulated, habeas
03:06 25 jurisdiction in this court is consistent with ordinary

1 principles of habeas jurisdiction and, if not, certainly the
2 government's behavior, ignoring a Court's order and whisking
3 her away, certainly give ample reason to preserve the
4 jurisdiction of this Court in Massachusetts.

03:06 5 THE COURT: And, if not, in the District of Vermont,
6 counsel?

7 MS. LAFAILLE: Well, we think this case --

8 THE COURT: And if not, in the District of Vermont?

9 MS. LAFAILLE: Sorry, your Honor. I hear you now.
03:07 10 Yes. Absolutely, your Honor. If not here, then a transfer to
11 Vermont would be the appropriate remedy.

12 THE COURT: Meaning I took those to be alternative
13 arguments as the government has made alternative arguments.

14 MS. LAFAILLE: Yes, your Honor.

03:07 15 THE COURT: Counsel, I appreciate the arguments, thank
16 you, on both sides.

17 Counsel, I think there were other folks, some who are
18 on Zoom, that were queued up to address other issues. To be
19 completely transparent, as hopefully my questions to both sides
03:07 20 suggested, I'm very focused on the jurisdictional issue, which
21 is very much a live issue here, so I'm inclined to wrestle with
22 that a little bit more and get a decision out in that regard.
23 And then if there are further proceedings, we would go from
24 there. Okay?

03:07 25 Thank you, counsel.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE CLERK: All rise.

(The Honorable Court exited.)

(Adjourned, 3:09 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)

I, Kristin M. Kelley, certify that the foregoing is a
correct transcript from the record of proceedings taken
April 3, 2025 in the above-entitled matter to the best of my
skill and ability.

/s/ Kristin M. Kelley

April 8, 2025

Kristin M. Kelley, RPR, CRR
Official Court Reporter

Date